

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

**FILED**

**DEC 03 2019**

Clerk, U S District Court  
District Of Montana  
Billings

**AVENUE C APARTMENTS, LLC,  
a Montana limited liability company,**

**Plaintiff,**

**vs.**

**THE CINCINNATI INSURANCE  
COMPANY, a corporation; and  
JOHN DOES 1-10,**

**Defendants.**

**CV 19-37-BLG-SPW**

**ORDER ADOPTING  
MAGISTRATE'S FINDINGS  
AND RECOMMENDATIONS**

The United States Magistrate Judge filed Findings and Recommendations on November 12, 2019. (Doc. 17.) The Magistrate recommended that the Court grant the Cincinnati Insurance Company's (Cincinnati) Motion to Dismiss (Doc. 5) as to Count 3 and as to those claims in Count 2 based on Mont. Code Ann. § 33-18-201(2), (3), (7), (8), (10)-(12), and (14). (*Id.* at 12.) The Magistrate further recommended the Court strike language from Count 2 that reads, "with such frequency as to indicate a general business practice," because a claim under the Unfair Trade Practices Act (UTPA) does not require showing "a general business practice" as an element. (*Id.*)

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendations. No objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach.*, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After reviewing the Findings and Recommendation, this Court does not find that the Magistrate committed clear error. An insured may only bring a cause of action against an insurer under the UTPA for violations of § 33-18-201(1), (4)-(6), (9), and (13). Section 33-18-242; *see Mark Ibsen, Inc. v. Caring for Montanans, Inc.*, 371 P.3d 446, 452 (Mont. 2016). An insured may not bring an action for bad faith in connection with the handling of an insurance claim, despite ACA's arguments to the contrary. Section 33-18-243(3). Finally, Avenue C Apartments (ACA) has agreed to strike the general business practice language from Count 2. (Doc. 10 at 4.) Accordingly,

**IT IS ORDERED** that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 17) are **ADOPTED IN FULL**.

**IT IS FURTHER ORDERED:**

1. Cincinnati's Motion to Dismiss (Doc. 5) is **GRANTED** as to Count 3 and as to those claims in Count 2 based on Mont. Code Ann. § 33-18-201(2), (3), (7), (8), (10)-(12), and (14).
2. ACA's allegation contained in Count 2 (Doc. 1, ¶ 45), reading, "with such frequency as to indicate a general business practice," is **STRICKEN**.

DATED this 2<sup>nd</sup> day of December, 2019.

Susan P. Watters  
SUSAN P. WATTERS  
United States District Judge